

121 FERC ¶ 61,261  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Mississippi Power Company

Docket Nos. ER08-91-000  
EL08-16-000

ORDER ACCEPTING AND SUSPENDING DEPRECIATION RATES AND  
ESTABLISHING A SECTION 206 PROCEEDING, HEARING AND SETTLEMENT  
JUDGE PROCEDURES

(Issued December 20, 2007)

1. In this order, we accept for filing Mississippi Power Company's (Mississippi Power) amended depreciation rates, suspend the rates for a nominal period, and make them effective January 1, 2008, subject to refund. We also establish a section 206 proceeding, hearing and settlement judge procedures.

**I. Description of the Filing**

2. On October 24, 2007, Mississippi Power submitted a request for authorization to update its depreciation rates in the calculation of charges for services provided pursuant to certain jurisdictional contracts and rate schedules.<sup>1</sup> Mississippi Power seeks to implement the depreciation rates for billing purposes beginning January 1, 2008, and in connection with rate and other matters filed after the date of the instant filing for which 2008 depreciation expense is a component. Mississippi Power asserts that its filing is in

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<sup>1</sup> Mississippi Power states that the proposed depreciation rates may affect wholesale electric service under Rate Schedule MRA-20, rates under the Transmission Facilities Agreement between Southern and Gulf States Utilities Company (Entergy GSU Agreement), and charges for service under Southern Company Services, Inc.'s (Southern) Open Access Transmission Tariff (OATT). Southern is acting as an agent for Mississippi Power, Georgia Power Company, Gulf Power Company, Alabama Power Company, Savannah Electric and Power Company, and Southern Electric Generating Company (SEGCO).

accordance with Commission Order No. 618<sup>2</sup> and section 205 of the Federal Power Act.<sup>3</sup> In support of its request, Mississippi Power submitted testimony and a depreciation study.

3. Mississippi Power states that the proposed depreciation rates may affect Rate Schedule MRA-20,<sup>4</sup> but acknowledges that the prices will not be changed based solely upon the changes proposed here. In addition, Mississippi Power states that there will be a *de minimis* effect on general plant depreciation for the Entergy GSU Agreement,<sup>5</sup> which applies straight-line depreciation to the transmission facilities covered by the agreement and allocates a portion of the General Plant costs to those transmission facilities. Further, Mississippi Power will apply the proposed depreciation rates in Southern's annual informational filing to the Commission to update projected data inputs used in calculating charges applicable for service under Southern's OATT; those charges will go into effect beginning January 1, 2008.

## **II. Notice of Filing and Responsive Pleading**

4. Notice of Mississippi Power's filing was published in the *Federal Register*, 72 Fed. Reg. 62,464 (2007), with interventions and protests due on or before November 15, 2007. South Mississippi Electric Power Association (SMEPA) filed a motion to intervene, protest and request for hearing.

5. SMEPA argues that Mississippi Power's proposed rates may be excessive, and therefore unjust and unreasonable and unduly discriminatory. It contends that Mississippi Power provides summary results of its depreciation study and makes conclusory statements, but does not provide sufficient detail to meet its burden of proof that the basis for the proposed rates is appropriate.

6. In addition, SMEPA asserts that Mississippi Power's reported net cost of removal rate for steam production plant is distorted by the inclusion of invalid, outlier data points. Moreover, SMEPA contends that Mississippi Power fails to explain the basis for unusually high net removal rates and widely diverging net removal rates in Exhibit C of the depreciation study. It also argues that Mississippi Power does not state how the net removal rate for Mississippi Power's general plant function was determined to be zero percent; SMEPA argues that the rate could, in fact, be negative.

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<sup>2</sup> *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs. ¶ 31,104, at 31,695 & n.25 (2000).

<sup>3</sup> 16 U.S.C. § 824(d) (2000).

<sup>4</sup> *Mississippi Power Co.*, Docket No. ER02-1249 (April 19, 2002) (unpublished letter order) (accepting amendments to Mississippi Power's tariff).

<sup>5</sup> *Southern Company Services, Inc.*, 26 FERC ¶ 61,360, *reh'g denied*, 27 FERC ¶ 61,444, *reh'g denied*, 28 FERC ¶ 61,349 (1984).

7. Regarding the depreciation rates, SMEPA states that the average service lives of several plant accounts in the filing have decreased since the average service lives were reported in Mississippi Power's 2004 depreciation study, with no explanation. SMEPA argues that reduced average service lives will lead to recovery of the cost of plant over a shorter period of time, resulting in higher annual depreciation costs for wholesale ratepayers. Finally, SMEPA questions the discrepancy between Mississippi Power's proposed net removal rates for its transmission function, ranging from 15 to 30 percent, and similar rates for its sister company, Georgia Power Company, determined to be 10 percent.<sup>6</sup> SMEPA explains that application of higher net removal costs to plant investment will lead to recovery of higher costs.

8. To allow investigation of these alleged deficiencies in Mississippi Power's analysis, SMEPA requests that the Commission set Mississippi Power's filing for a full evidentiary hearing and discovery.

### **III. Discussion**

#### **A. Procedural Matters**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

#### **B. Substantive Matters**

10. Mississippi Power's amended depreciation rates raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

11. Our preliminary analysis indicates that Mississippi Power's amended proposed depreciation rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. While Mississippi Power submitted a depreciation study, the study lacks details and explanations to justify the proposed depreciation rates. Accordingly, we will accept Mississippi Power's amended depreciation rates for filing, suspend them for a nominal period, make them effective January 1, 2008, subject to refund, and set them for hearing and settlement judge procedures.

12. As noted, the proposed changes in depreciation rates will primarily affect the transmission and general plant functions. We note that the revised depreciation rates

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<sup>6</sup> SMEPA Protest, 10-11 (*citing* Georgia Power Depreciation Rate Study, 20-21, Docket No. 25060-U (Ga. P.S.C. Dec. 31, 2005)).

proposed reflect depreciation rate reductions in those functions and will result in reduced depreciation expenses. In addition, our preliminary review indicates that Mississippi Power's proposed depreciation rates may be excessive. In order to protect the customers from possibly excessive depreciation expenses, we will institute a section 206 proceeding in Docket No. EL08-16-000. In addition, because this investigation will involve issues of material fact, we will set the matter for a trial-type evidentiary hearing.

13. In cases where, as here, the Commission institutes a section 206 proceeding on its own motion, section 206(b), as amended by the Energy Policy Act of 2005,<sup>7</sup> requires that the Commission establish a refund effective date that is no earlier than the date of the publication by the Commission of notice of the initiation of the Commission's proceeding in the *Federal Register*, and no later than five months after the publication date. In order to give maximum protection to customers, and consistent with our precedent,<sup>8</sup> we will establish a refund effective date at the earliest date allowed. This date will be the date on which notice of the initiation of the proceeding in Docket No. EL08-16-000 is published in the *Federal Register*.

14. In addition, section 206 requires that, if no final decision has been rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Given the nature and complexity of the matters to be resolved, we expect that, assuming the case does not settle, the presiding judge should be able to render a decision by November 30, 2008. If the presiding judge is able to render a decision by that date, and assuming the case does not settle, we estimate that we will be able to issue our decision within approximately five months of the filing of briefs on and opposing exceptions or by June 30, 2009.

15. Because Docket Nos. ER08-91-000 and EL08-16-000 raise common issues of law and fact, we will consolidate them for purposes of settlement, hearing and decision.

16. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before the hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>9</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

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<sup>7</sup> Pub. L. No. 109-58, § 1285, 119 Stat. 594, 980-81 (2005).

<sup>8</sup> See, e.g., *Canal Electric Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

<sup>9</sup> 18 C.F.R. § 385.603 (2007).

otherwise, the Chief Judge will select a judge for this purpose.<sup>10</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Mississippi Power's amended depreciation rates are hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2008, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning Mississippi Power's amended depreciation rates. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) The Secretary shall promptly publish a notice of the Commission's initiation of the investigation under section 206 of the Federal Power Act in Docket No. EL08-16-000 in the *Federal Register*.

(D) The refund effective date in Docket No. EL08-16-000, established pursuant to section 206(b) of the Federal Power Act, will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (C) above.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2007), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

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<sup>10</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) – click on Office of Administrative Law Judges).

(F) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) Docket Nos. ER08-91-000 and EL08-16-000 are hereby consolidated for purposes of settlement, hearing and decision.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.